

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>JAN BYRNE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO.: 2:06-CV-1084-WKW</b>
	)	
<b>ALABAMA ALCOHOLIC BEVERAGE</b>	)	
<b>CONTROL BOARD, and</b>	)	
<b>EMORY FOLMAR, in his individual</b>	)	
<b>and official capacities,</b>	)	
	)	
<b>Defendants.</b>	)	

**MOTION BY DEFENDANTS ALABAMA ALCOHOLIC BEVERAGE  
CONTROL BOARD AND EMORY FOLMAR TO DISMISS FOR FAILURE  
TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

COME NOW Alabama Alcoholic Beverage Control Board and Emory Folmar, named Defendants in the above-styled cause, and move this Honorable Court to dismiss this action with prejudice, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief may be granted.

The grounds for this Motion, which are discussed more fully in the accompanying Memorandum, are that Defendant Folmar is immune from damages liability in his individual capacity under 42 U.S.C. § 1983 for his performance of legislative and discretionary functions; that no action may be maintained under § 1983 against Defendant Folmar in his official capacity as Administrator of the Alabama Alcoholic Beverage Control Board, as such

an action is effectively against the Board or the State of Alabama; that Plaintiff has not alleged that she has filed a charge of discrimination with the Equal Employment Opportunity Commission, or that she has received a right-to-sue letter from the EEOC and filed her Complaint within the time provided for in such letter; and that Plaintiff's Complaint fails as a matter of law to assert claims under § 1983 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.

WHEREFORE, Defendants Alabama Alcoholic Control Board and Emory Folmar move this Court to dismiss this action due to the Plaintiff's failure to state a claim upon which relief can be granted and for such other, further, or different relief to which the Defendants may be entitled.

Respectfully submitted this 17<sup>th</sup> day of April, 2008.

s/Joseph W. Adams

Joseph W. Adams  
Post Office Box 1487  
Ozark, Alabama 36361  
Tel: (334) 774-5533  
Fax: (334) 774-1252  
E-Mail: [Joeadamslaw@aol.com](mailto:Joeadamslaw@aol.com)  
Bar Number: ASB-3743-A34J

s/Robert A. Huffaker

Robert A. Huffaker  
Rushton, Stakely, Johnston  
& Garrett, P.A.  
Post Office Box 270  
Montgomery, Alabama 36101-0270  
Tel: (334) 206-3215  
Fax: (334) 481-0814  
E-Mail: [rah@rsjg.com](mailto:rah@rsjg.com)  
Bar Number: ASB-7668-U79R

Attorneys for Defendants Alabama  
Alcoholic Beverage Control Board  
and Emory Folmar

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of April, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record and I hereby certify that I have mailed, by United States Postal Service, the foregoing document to the following:

Jay Lewis  
Fred Clements  
Law Offices of Jay Lewis, LLC  
Post Office Box 5059  
Montgomery, Alabama 36103

s/Robert A. Huffaker

Of Counsel